Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
U S WEST, Inc., Transferor, and	)	
Qwest Communications International Inc.,	)	CC Docket No. 99-272
Transferee, For Consent to Transfer of Control	)	

MCI WORLDCOM, INC.'S COMMENTS REGARDING THE QWEST / U S WEST PROPOSED DIVESTITURE PLAN

On October 18, 1999, Qwest Communications International Inc. ("Qwest") and U S WEST, Inc. ("U S WEST") (collectively, the "Applicants") jointly submitted to the Federal Communications Commission ("FCC" or "Commission") a proposed "Inter-LATA Business" Divestiture Plan ("Divestiture Plan") as part of their response to public comments and petitions filed in connection with their application to transfer control of licenses and FCC authorizations. MCI WORLDCOM, Inc. ("MCI WorldCom") hereby submits its Comments in response to the above-referenced Qwest / U S WEST proposed Divestiture Plan.

INTRODUCTION

Pursuant to the Divestiture Plan, Qwest and U S WEST set forth all of the steps that Qwest will take to discontinue the provision of interLATA services in the U S WEST region upon consummation of the proposed merger, as well as the steps necessary to assign all existing service obligations to one or more independent interexchange carriers. The proposed Divestiture Plan also included a summary of how the Applicants will meet the statutory requirements of section 271 of the Communications Act, 47 U.S.C. § 271. Although the Divestiture Plan provides more detail regarding Qwest's proposed divestiture than does the Applicants' initial application, several issues regarding Qwest's divestiture proposal should be carefully scrutinized and then clarified by this Commission.

DISCUSSION

I. Qwest's Transfer of In-Region InterLATA Switched LD Service.

In Section I (A) of its Divestiture Plan, Qwest pledges to "irrevocably transfer its in-region interLATA originating switched long distance business, and its in-region interLATA terminating 800 business to a certified carrier as of closing." Those representations notwithstanding, the Divestiture Plan does not expressly indicate that, to the extent Qwest provides switched service to switchless resellers, all wholesale accounts will be assigned/transferred/divested. Such a requirement is necessary if the Applicants seek to remain in compliance with section 271 of the Act.

The Divestiture Plan calls for the assignment of Qwest's contracts to another carrier. However, several key questions about this clause of the Divestiture Plan must be addressed. Qwest should advise this Commission if it has any contracts that cannot be assigned without customer consent. If it does, Qwest should explain what steps it will take in the event that a customer refuses to consent to the arranged assignment. Moreover, Qwest should also be made to explain what it will do if the assignee will only meet the terms of an assigned agreement at a greater cost to the customer. While these situations may prove only hypothetical, just in case they do occur, we believe that Qwest should have any necessary steps for their resolution established as part of the Divestiture Plan.

II. Qwest's Plan to Lease Ports on Its In-Region Switches.

On pages 3 and 7 of the Divestiture Plan, Qwest states its intention to lease ports on its in-region switches. It contends that the provision of this service would not constitute the provision of a telecommunications service and thus, would not violate section 271 of the Act. We are not convinced that Qwest's interpretation of the law is the correct one. Section 153(44) of the Act, 47 U.S.C. § 153(44), defines "telecommunications service" as the "offering of telecommunications [1] for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." We believe that the Act's definition of "telecommunications service" raises serious questions regarding the accuracy of Qwest's assessment. Accordingly, the Commission should, at the very least, give further consideration to Qwest's contentions here by making a determination as to the validity of Qwest's interpretation of law. If the Commission concludes that Qwest should not be permitted to lease the ports as it intends, it should require Qwest to place this express prohibition within the Divestiture Plan.

---

[1] The term "telecommunications" is defined by the Act as the transmission, between or among points specified by the end user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. § 153(43).

III. Qwest's Plan to Provide Customer Support Functions.

Qwest also proposes to continue to provide a variety of support functions to customers in the U S WEST region that currently purchase its long distance service even though its proposed divestiture of its long distance interests would mean that another interexchange carrier ("IXC") would provide the customer with long distance service. The functions listed by Qwest include billing and collection activities[2] and customer care[3]. Qwest broadly defines "customer care" to include not only the placement of orders, but also the provision of "other information" about available services[4] - a function that appears to constitute marketing. In essence, this means that Qwest will retain a relationship with its current in-region long distance customers, and those customers will continue to look to Qwest as the interface for long distance services.

While Qwest may find an assignee who will agree to this arrangement, we believe that the benefits derived from nurturing these relationships will likely mean that Qwest would be willing to accept less money for the divested services. However, this is exactly the kind of relationship that Bell Operating Company's ("BOC") are prohibited from providing with long distance customers. A BOC cannot provide these functions on an exclusive basis to an IXC. This sounds less like a complete divestiture if U S WEST, through Qwest, is performing functions for an IXC that it would not perform for any other IXC - and is maintaining a

---

[2] *See* Divestiture Plan, page 8.

[3] *Id.*

[4] This appears to be a marketing service.

relationship that will position it to capture more long distance business more quickly when it gets section 271 authority.

IV. Qwest's Plan Regarding InterLATA Information Services.

Qwest acknowledges that it cannot provide interLATA information services, or such services used in connection with other providers' information services, and thus agrees to discontinue this practice. On the other hand, Qwest fails to acknowledge expressly that it cannot provide in-region interLATA backbone transmissions for any provider, including itself. Instead, Qwest cites two categories of services which it believes will be impacted by the merger--web hosting and dial up and dedicated Internet access services. Although Qwest also owns significant backbone facilities within the US West region, it makes no reference to any action it would undertake to address section 271 prohibitions on providing in-region, interLATA services. At minimum, Qwest must be required to allow end users to select and use a third party to provide in-region interLATA backbone transmission services. [5] Therefore, we believe that Qwest should, as part of the Divestiture Plan, set forth affirmative steps it would take to immediately divest its in-region, interLATA backbone facilities for ISPs that provide in-region interLATA services.

---

[5] We recognize, as has Qwest and US West, that there are several pending dockets that have placed this issue squarely before the Commission.

CONCLUSION

In light of the foregoing, we believe that the Commission should require Qwest and U S WEST to provide additional information concerning certain provisions of its Divestiture Plan as a condition to its approval of the proposed merger. This is the only way in which the Commission can be assured that the merged parties will comply with all of the requirements of Section 271 of the Communications Act.

Respectfully submitted,

MCI WORLDCOM, INC.

By: J. Carl Wilson Jr

J. Carl Wilson, Jr.
Lisa B. Smith
MCI WORLDCOM, INC.
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 887-2666

Anthony C. Epstein
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 429-3000

Dated: October 26, 1999

Comments of MCI WORLDCOM, Inc.
Regarding Qwest Divestiture Plan
CC Docket No. 99-272
Filed: October 26, 1999

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served, this 26th day of October, 1999, hand-delivery, on the following: *

Magalie Roman Salas
Secretary
Federal Communications Commission
445-12th Street, S.W., TW B204
Washington, DC 20554

Janice Myles
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
445-12th Street, S.W., Room 5-C327
Washington, DC 20554

International Transcription Service, Inc.
445-12th Street, S.W., CY B402
Washington, DC 20554

Office of Public Affairs
Federal Communications Commission
445-12th Street, S.W., Room CY-C314
Washington, DC 20554

J. Carl Wilson Jr.

J. Carl Wilson, Jr.

* Copies of the forgoing were also served, on this date, on each of the parties to this proceeding.